

February 18, 2009

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 08-1284

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UNITED STATES
DISTRICT COURT

In Regard to the Matter of:

Bayside State Prison
Litigation

OPINION/REPORT
OF THE
SPECIAL MASTER

KENNETH BECHEAM

-vs-

WILLIAM H. FAUVER, et al,

Defendants.

* * * *

WEDNESDAY, FEBRUARY 18, 2009

* * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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4 Transcript of proceedings in the above
5 matter taken by Theresa O. Mastroianni, Certified
6 Court Reporter, license number 30X100085700, and
7 Notary Public of the State of New Jersey at the
8 United States District Court House, One Gerry Plaza,
9 Camden, New Jersey, 08102, commencing at 1:52 PM.
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1 JUDGE BISSELL: I'm now reopening the
2 matter involving Kenneth Becheam, docket number
3 08-1284.

4 This opinion/report is being issued
5 pursuant to the directives of the Order of Reference
6 to a Special Master and the Special Master's
7 Agreement and the guiding principles of law which
8 underlie this decision to be applied to the facts
9 upon which it is based as set forth in the jury
10 instructions in the Walker and Mejias jury charges to
11 the extent applicable to the allegations in Mr.
12 Becheam's case.

13 As finalized after review under Local
14 Civil Rule 52.1, the transcript of this oral opinion
15 will constitute the written report required by
16 paragraph seven of the Order of Reference to a
17 Special Master.

18 Mr. Becheam was a resident of D Unit.
19 He describes the incident that occurred to him as
20 occurring in August of '97 without any more
21 particular personal recollection.

22 Mr. Becheam's encounter with SOG
23 officers evolved from his efforts to make use of the
24 telephone at a time apparently when telephone
25 privileges were being restored. As he testified

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1 beginning at page 16 of his transcript of October
2 31st, 2008 and I'll paraphrase it first, there was a
3 bank of four telephones there, he was assigned one
4 that did not work well and his phone call, although
5 he was only making one, was being cut off.
6 Accordingly, he asked the officer who was supervising
7 him at the time as to whether he could replace the
8 call and was told no that he couldn't. He asked to
9 use another phone. He was also told no. Apparently
10 he also tried to redial the number on the first phone
11 and the officer regarded this as a violation of the
12 rules with regard to phone use and told him to go
13 back to his bed area, which he did.

14 He said very shortly after he returned
15 to his bunk he heard the SOG officers coming. They
16 extracted him from his cell, took him into the main
17 TV room, strip searched him and at this point a
18 certain colloquy occurred as he describes it
19 beginning at line 17 on page 18.

20 "When he got through he said what did
21 you do, pop. I said I didn't do anything. He said
22 I'm going to ask you again, what did you do. I said
23 I was using the phone and the phone went dead on me.
24 So I asked him, can I redial it. And so what took
25 place after that was they told me to put my hands

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1 behind my back and they cuffed me."

2 Apparently he had been nude, but was
3 redressed at this time. They then proceeded to take
4 him to the nurse. He had some trouble moving in
5 transit and they used efforts to prop him up and
6 assist his progress. That was no difficulty. He
7 hadn't yet received any punishment or assaults. He
8 passed muster before the nurse and then was taken
9 over to B Unit for lockup.

10 He begins once again at page 19 line
11 14:

12 "As I was going to B Unit my leg gave
13 out. Once it gave out I was on my knees there. So
14 he said, listen, you don't want my men to pick you up
15 and carry you, you're not going to like it. I said
16 okay, give me a second. And when he gave me a
17 second, I got up and I like semi ran up the stairway.
18 They had long stairs going up to B Unit and I hurried
19 up as quick as possible because I knew my back would
20 go out again. So what happened after that is when I
21 got inside, I seen, you know, a couple of police
22 sitting around. He had the whole riot gear on, you
23 know, the helmet, the vest, the big long sticks, the
24 batons. So they told me to undress there and I
25 undressed again. While I'm undressed there, one of

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1 them, I thought he was joking really, one of the
2 officers said, say I love Bayside. And I looked at
3 him like are you serious. So he was like you see him
4 over there, I think it was a middle age guy maybe in
5 his twenties or thirties, he was crying and he was
6 singing I love Bayside loudly."

7 The description goes on about a
8 collateral matter and resumes at page 21 on line six.

9 "Question: What happened to you next?

10 "Answer: After I got dressed, the cuff
11 was put back on and I was told sit back down. I was
12 kicked on my right side and had about three or four
13 steps to go down to where the cell is at.

14 "Question: Let me interrupt you, sir,
15 because I knocked you off your narrative. Let's go
16 back to when you were nude and they were telling you
17 to sing, what happened there?"

18 He talks again about the singing and
19 then after that he said:

20 "Answer: But from there they picked me
21 up and took me to the cell. And as they took me to
22 the cell, one of them, he chose a guy inside the cell
23 to get under the bed. When he took me in there,
24 that's when he kind of threw me down on the cuffs and
25 got tighter. They acted like it was nothing to them.

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1 And from there actually, you know, I just remember my
2 hands swelling up. My back was in pain, you know.

3 "Question: How did you get down the
4 stairs, sir?

5 "Answer: The stairway where I was
6 singing at, after they kicked me down, I was about
7 two maybe three stairs going down because you go into
8 the units and you have like a podium where the
9 officer sits, then when you get ready to get down to
10 the first floor, you have to go down about two or
11 three stairs. And when they pushed me down there or
12 kicked me it was, I just start singing really, I
13 became fearful of them.

14 "Question: How many times did you get
15 kicked? Can you estimate?

16 "Answer: I gave up counting, I really
17 did.

18 "Question: Did you get kicked in your
19 back in your back.

20 "Answer: I got kicked in the back, I
21 was hit with the batons in the lower right part of my
22 back, my hip. I got hit in the top of my shoulders
23 between the center of my back and my ribs.

24 "Question: Did you get hit in the
25 neck, sir?

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1 "Answer: Absolutely, at the top of my
2 neck and shoulder.

3 "Question: Now, this beating that you
4 took, did it hurt?

5 "Answer: Yes, it did.

6 "Question: For how long did the
7 beating hurt?

8 "Answer: I couldn't lay on my right
9 side, I had to lay on my stomach to go to sleep for
10 at least five or six days. Nobody came to see me,
11 nobody."

12 Page 27 he talks about possible
13 psychological impact of this event, but acknowledged
14 also that they are not recoverable and I have
15 determined that they haven't been proved here with
16 adequate precision and support to support any claim
17 for psychological damages.

18 At page 28 I asked some questions
19 myself for some clarification here. And beginning at
20 line 14:

21 "Question: When was it you mentioned
22 that you were kicked or pushed down these two or
23 three stairs in B Unit as you were being directed to
24 a cell there, correct?

25 "Answer: Yes.

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1 "Question: Now, when after that were
2 you kicked and beaten with batons? Was it on the
3 floor of the unit there before you got into your cell
4 or was it in your cell or both? Can you just clarify
5 that, please?

6 The witness said: "Well, basically
7 once I was kicked down the stairs there was a bunch
8 of nigger this, nigger that, so I thought that if I
9 said nigger, maybe they'll leave me alone. Instead
10 they kind of whacked me a couple of times while I was
11 there and so I just got tired of even trying to think
12 of it. And when they got me in the cell, they
13 whacked me a couple of times and the cuffs became
14 tight on my hands and they left me there."

15 I might add I studied the
16 cross-examination, and I conclude that it did not
17 impugn the accuracy of his testimony with regard to
18 the treatment by the SOGs when going into B Unit. It
19 did indicate and reveal that he had a pre-existing
20 back condition and the cross-examination also
21 established that there was indeed a pre-existing
22 condition here which was aggravated by the events in
23 question in B Unit. Also, however, his residual pain
24 was as much if not more from the pre-existing
25 condition than any exacerbation. In other words, I

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1 have not assigned, if you will, his permanency solely
2 to the beating that took place here. It has other
3 underlying pre-existing causes, but nevertheless, it
4 did aggravate it and was a contributing factor even
5 in the permanency that ensued.

6 This Master is recommending a judgment
7 for the plaintiff in this case. There was absolutely
8 no valid penalogical purpose for the manner in which
9 he was treated upon being brought into B Unit. He
10 was fully cuffed, completely submissive, no danger to
11 the officers in question and furthermore was being
12 brought to B Unit not because of any violent activity
13 that he had undertaken, but merely for, in my view, a
14 rather benign infraction, to wit, an effort to use a
15 phone twice rather than once. That's frankly the
16 most charitable viewing that one could give to the
17 defendants or the prison authorities here.

18 Accordingly, we are dealing here with
19 excessive force, inflicting cruel and unusual
20 punishment and sadistic acts by the SOG officers
21 involved for the reasons indicated above. There was,
22 indeed, excessive, unnecessary and sadistic force
23 imposed upon Mr. Becheam within the contemplation of
24 the legal principles recited in the jury instructions
25 which govern our proceeding.

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1 However, in light of the fact that the
2 striking inflicted upon Mr. Becheam were not
3 particularly prolonged or repetitious, but covered a
4 rather short period of time, and while inexcusable
5 and actionable, were not too severe in terms of the
6 force imposed as well as, as I said, a lack of
7 prolonged or repetitious activity. And, therefore,
8 while actionable for recovery of compensatory
9 damages, I do not find that this assault rose to the
10 level of being so egregious as to support a claim for
11 punitive damages. Accordingly, I would not recommend
12 an assessment of punitive damages in this matter.

13 Finally, although not every item of
14 evidence has been discussed in this opinion/report,
15 all evidence presented to the Special Master was
16 reviewed and considered.

17 I find that the injury inflicted here
18 is actionable. I find that the injury was acute
19 initially and that the assault in question here has
20 been a contributor to the continuation of a permanent
21 injury with regard to this gentleman's back, albeit
22 one that pre-existed from other causes as well which
23 continue to contribute to his present condition.

24 Accordingly, I recommend in this report
25 that the district court enter an award of

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1 compensatory damages in the amount of six thousand
2 dollars in Mr. Becheam's favor.

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C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

Theresa O. Mastroianni
Theresa O. Mastroianni, C.S.R.
Notary Public, State of New Jersey
My Commission Expires May 5, 2010
Certificate No. XI0857
Date: February 19, 2009

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